

FDA may place a proposed or ongoing investigation involving an exception from informed consent under § 50.23(d) of this chapter on clinical hold if it is determined that:

(i) Any of the conditions in paragraphs (b)(1) or (b)(2) of this section apply; or

(ii) A determination by the President to waive the prior consent requirement for the administration of an investigational new drug has not been made.

(c) *Discussion of deficiency.* Whenever FDA concludes that a deficiency exists in a clinical investigation that may be grounds for the imposition of clinical hold FDA will, unless patients are exposed to immediate and serious risk, attempt to discuss and satisfactorily resolve the matter with the sponsor before issuing the clinical hold order.

(d) *Imposition of clinical hold.* The clinical hold order may be made by telephone or other means of rapid communication or in writing. The clinical hold order will identify the studies under the IND to which the hold applies, and will briefly explain the basis for the action. The clinical hold order will be made by or on behalf of the Division Director with responsibility for review of the IND. As soon as possible, and no more than 30 days after imposition of the clinical hold, the Division Director will provide the sponsor a written explanation of the basis for the hold.

(e) *Resumption of clinical investigations.* An investigation may only resume after FDA (usually the Division Director, or the Director's designee, with responsibility for review of the IND) has notified the sponsor that the investigation may proceed. Resumption of the affected investigation(s) will be authorized when the sponsor corrects the deficiency(ies) previously cited or otherwise satisfies the agency that the investigation(s) can proceed. FDA may notify a sponsor of its determination regarding the clinical hold by telephone or other means of rapid communication. If a sponsor of an IND that has been placed on clinical hold requests in writing that the clinical hold be removed and submits a complete response to the issue(s) identified in the clinical hold order, FDA shall respond in writing to the sponsor within 30-cal-

endar days of receipt of the request and the complete response. FDA's response will either remove or maintain the clinical hold, and will state the reasons for such determination. Notwithstanding the 30-calendar day response time, a sponsor may not proceed with a clinical trial on which a clinical hold has been imposed until the sponsor has been notified by FDA that the hold has been lifted.

(f) *Appeal.* If the sponsor disagrees with the reasons cited for the clinical hold, the sponsor may request reconsideration of the decision in accordance with § 312.48.

(g) *Conversion of IND on clinical hold to inactive status.* If all investigations covered by an IND remain on clinical hold for 1 year or more, the IND may be placed on inactive status by FDA under § 312.45.

[52 FR 8831, Mar. 19, 1987, as amended at 52 FR 19477, May 22, 1987; 57 FR 13249, Apr. 15, 1992; 61 FR 51530, Oct. 2, 1996; 63 FR 68678, Dec. 14, 1998; 64 FR 54189, Oct. 5, 1999; 65 FR 34971, June 1, 2000]

§ 312.44 Termination.

(a) *General.* This section describes the procedures under which FDA may terminate an IND. If an IND is terminated, the sponsor shall end all clinical investigations conducted under the IND and recall or otherwise provide for the disposition of all unused supplies of the drug. A termination action may be based on deficiencies in the IND or in the conduct of an investigation under an IND. Except as provided in paragraph (d) of this section, a termination shall be preceded by a proposal to terminate by FDA and an opportunity for the sponsor to respond. FDA will, in general, only initiate an action under this section after first attempting to resolve differences informally or, when appropriate, through the clinical hold procedures described in § 312.42.

(b) *Grounds for termination—(1) Phase 1.* FDA may propose to terminate an IND during Phase 1 if it finds that:

(i) Human subjects would be exposed to an unreasonable and significant risk of illness or injury.

(ii) The IND does not contain sufficient information required under § 312.23 to assess the safety to subjects of the clinical investigations.

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(iii) The methods, facilities, and controls used for the manufacturing, processing, and packing of the investigational drug are inadequate to establish and maintain appropriate standards of identity, strength, quality, and purity as needed for subject safety.

(iv) The clinical investigations are being conducted in a manner substantially different than that described in the protocols submitted in the IND.

(v) The drug is being promoted or distributed for commercial purposes not justified by the requirements of the investigation or permitted by § 312.7.

(vi) The IND, or any amendment or report to the IND, contains an untrue statement of a material fact or omits material information required by this part.

(vii) The sponsor fails promptly to investigate and inform the Food and Drug Administration and all investigators of serious and unexpected adverse experiences in accordance with § 312.32 or fails to make any other report required under this part.

(viii) The sponsor fails to submit an accurate annual report of the investigations in accordance with § 312.33.

(ix) The sponsor fails to comply with any other applicable requirement of this part, part 50, or part 56.

(x) The IND has remained on inactive status for 5 years or more.

(xi) The sponsor fails to delay a proposed investigation under the IND or to suspend an ongoing investigation that has been placed on clinical hold under § 312.42(b)(4).

(2) *Phase 2 or 3.* FDA may propose to terminate an IND during Phase 2 or Phase 3 if FDA finds that:

(i) Any of the conditions in paragraphs (b)(1)(i) through (b)(1)(xi) of this section apply; or

(ii) The investigational plan or protocol(s) is not reasonable as a bona fide scientific plan to determine whether or not the drug is safe and effective for use; or

(iii) There is convincing evidence that the drug is not effective for the purpose for which it is being investigated.

(3) FDA may propose to terminate a treatment IND if it finds that:

(i) Any of the conditions in paragraphs (b)(1)(i) through (x) of this section apply; or

(ii) Any of the conditions in § 312.42(b)(3) apply.

(c) *Opportunity for sponsor response.*

(1) If FDA proposes to terminate an IND, FDA will notify the sponsor in writing, and invite correction or explanation within a period of 30 days.

(2) On such notification, the sponsor may provide a written explanation or correction or may request a conference with FDA to provide the requested explanation or correction. If the sponsor does not respond to the notification within the allocated time, the IND shall be terminated.

(3) If the sponsor responds but FDA does not accept the explanation or correction submitted, FDA shall inform the sponsor in writing of the reason for the nonacceptance and provide the sponsor with an opportunity for a regulatory hearing before FDA under part 16 on the question of whether the IND should be terminated. The sponsor's request for a regulatory hearing must be made within 10 days of the sponsor's receipt of FDA's notification of nonacceptance.

(d) *Immediate termination of IND.* Notwithstanding paragraphs (a) through (c) of this section, if at any time FDA concludes that continuation of the investigation presents an immediate and substantial danger to the health of individuals, the agency shall immediately, by written notice to the sponsor from the Director of the Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, terminate the IND. An IND so terminated is subject to reinstatement by the Director on the basis of additional submissions that eliminate such danger. If an IND is terminated under this paragraph, the agency will afford the sponsor an opportunity for a regulatory hearing under part 16 on the question of whether the IND should be reinstated.

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